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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 OLEG ANATOLYEVICH BORISOV,

9 Plaintiff,

v.

10 ALAMO RENT A CAR, et al.,

11 Defendants.
12

CASE NO. C18-5847 BHS

ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

13 This matter comes before the Court on Defendants Chase Bank USA, National
14 Association, JPMorgan Chase & Co., and JPMorgan Chase Bank National Association's
15 (collectively "Chase") motion to dismiss, Dkt. 13; Plaintiff Oleg Anatolyevich Borisov's
16 ("Borisov") motion for summary judgment, Dkt. 14, and Defendants Alamo Rent A Car
17 ("Alamo"), Enterprise Holdings, Inc. ("Enterprise"), and Snorac, LLC's ("Snorac")
18 (collectively the "Enterprise Defendants") motion to dismiss, Dkt. 16. The Court has
19 considered the pleadings filed in support of and in opposition to the motions and the
20 remainder of the file and hereby grants Defendants' motions to dismiss and denies
21 Borisov's motion as moot for the reasons stated herein.
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I. PROCEDURAL HISTORY

On April 25, 2018, Borisov filed a complaint in Clark County Superior Court for the State of Washington. *Borisov v. Alamo Rent A Car*, Cause No. C18-5429BHS, Dkt. 1-2. On May 30, 2018, Chase removed the matter to this Court. *Id.*, Dkt. 1. On June 4, 2018, Borisov filed an amended complaint dismissing his only federal claim. *Id.*, Dkt. 13. On August 20, 2018, the Court *sua sponte* remanded after declining to exercise supplemental jurisdiction over Borisov's remaining state law claims. *Id.*, Dkt. 37.

On October 17, 2018, Borisov filed a second amended complaint ("SAC") asserting ten causes of action as follows: (1) civil conspiracy in violation of the Federal Credit Billing Act ("FCBA"), 15 U.S.C. § 1666(a) and (b), for failure to explain two places at same time economic theory; (2) civil conspiracy in violation of 15 U.S.C. § 1666(a) and (b) for failure to correct; (3) civil conspiracy in violation of 15 U.S.C. § 1666a(a) for unlawful collection; (4) civil conspiracy in violation of 15 U.S.C. § 1666a(b) for unlawful reporting; (5) civil conspiracy in violation of 15 U.S.C. § 1666a(c) for failure to resolve reporting; (6) civil conspiracy in violation of 15 U.S.C. § 1666b(a) for unlawful late payment threats; (7) civil conspiracy in violation of 15 U.S.C. § 1666c(a) and (b) for failure to discontinue collection; (8) civil conspiracy in violation of 15 U.S.C. § 1666(d) for failure to refund; (9) civil conspiracy in violation of 15 U.S.C. § 1666e for failure to post credit; (10) civil conspiracy in violation of 15 U.S.C. § 1666i-1 for unlawful interest and finance charges; (11) civil conspiracy to violate RCW 9.35.020(1), .020(2), .020(7) for identity theft civil damages; (12) civil conspiracy to violate RCW 9.35.020(1), .020(2), .040(7) for failure to disclose; (13) civil conspiracy to violate the

1 Washington Consumer Protection Act (“CPA”), RCW Chapter 19.86; (14) conspiracy to
2 inflict economic harm for punitive damages; (15) conspiracy to inflict economic harm for
3 specific performance; (16) conspiracy to inflict economic harm for permanent injunction;
4 (17) credit repair; and (18) a cause of action for attorney’s fees. Dkt. 1-2 at 19–29.

5 Chase removed the matter on the same day. Dkt. 1.

6 On October 24, 2018, Chase moved to dismiss, Dkt. 13, and Borisov moved for
7 summary judgment, Dkt. 14. On November 7, 2018, the Enterprise Defendants filed a
8 motion to dismiss and to strike. Dkt. 16. On November 8, 2018, the Enterprise
9 Defendants responded to Borisov’s motion. Dkt. 20. On November 11, 2018, Borisov
10 responded to Chase’s motion. Dkt. 22. On November 14, 2018, Borisov responded to
11 the Enterprise Defendants’ motion. Dkt. 23. On November 15, 2018, Borisov replied to
12 the Enterprise Defendants’ response. Dkt. 24. On November 16, 2018, Chase replied to
13 Borisov’s response. Dkt. 25. On November 19, 2018, Chase responded to Borisov’s
14 motion. Dkt. 26. On November 23, 2018, Borisov’s replied to Chase’s response. Dkt.
15 28. On December 6, 2018, the Enterprise Defendants replied to Borisov’s response. Dkt.
16 29.

17 On January 2, 2019, the matter was transferred to the undersigned as related to the
18 previous matter. Dkt. 31.

19 **II. FACTUAL BACKGROUND**

20 On July 22, 2017, Borisov rented a vehicle from an Alamo location in Syracuse,
21 New York and allegedly returned the vehicle to an Alamo location in New York, New
22 York that same day. SAC, ¶¶ 14–20. Borisov expected to pay \$234.00 for the one-day

1 vehicle rental; however, on August 13, 2017, Alamo charged \$3,623.17 to Borisov's
2 Chase credit card. *Id.*, ¶¶ 22, 29. The higher-than-expected amount is based on Alamo's
3 records indicating that Borisov's "rental period" spanned twenty-three days: January 22,
4 2017 to August 13, 2017. *Id.*, ¶ 32.

5 After discovering the higher-than-expected charge and unsuccessfully disputing
6 the charge through Alamo, Borisov visited a Chase bank location in Vancouver,
7 Washington and disputed the charge through Chase's formal billing dispute resolution
8 process. *Id.*, ¶¶ 23–30. On August 15, 2017, Chase sent a letter to Borisov identifying
9 the disputed charge and advising Borisov that he was not required to pay the disputed
10 amount while Chase worked to provide a resolution. *Id.*, ¶ 31. On October 28, 2017,
11 Chase sent a letter to Borisov detailing Chase's research efforts regarding the dispute and
12 concluding that Chase "consider[s] the [charge] valid based on [Chase's] research and the
13 information provided to [Chase]." *Id.*, ¶ 34. In the letter, Chase explained that it
14 researched the issue as follows: (i) Chase contacted Alamo to obtain a credit for
15 Borisov's account, (ii) Alamo sent Chase information showing why Alamo believed the
16 charge was valid, (iii) Chase sent that information to Borisov in a letter and asked him
17 whether he wanted to continue the dispute, and (iv) Chase did not receive a response
18 from Borisov and tried unsuccessfully to contact Borisov about the dispute. *Id.* Finally,
19 the letter advised Borisov that the charge would be included in the balance on his next
20 billing statement. *Id.*

21 Borisov initiated another dispute with Chase. On November 20, 2017, Chase sent
22 a letter to Borisov advising that he was not required to pay the disputed amount while

Chase worked to provide a resolution. *Id.*, ¶ 38. On December 8, 2017, Chase sent a letter to Borisov detailing Chase’s investigatory efforts regarding the second dispute and concluding that Chase “consider[s] the [charge] valid based on [Chase’s] research.” *Id.*, ¶ 41. In the letter, Chase explained that it researched the issue as follows: (i) Chase contacted Alamo to obtain a credit for Borisov’s account, (ii) in reviewing the information provided to Chase by Borisov and Alamo, Chase found that Alamo submitted the charge for the amount agreed to “at the time of purchase,” and (iii) Chase cannot support the proposition that Borisov is due a credit without documentation showing that Borisov was charged the wrong amount. *Id.* Finally, the letter advised Borisov that the charge would be included in the balance on his next statement. *Id.*

III. DISCUSSION

A. Motions to Dismiss

Chase moves to dismiss for failure to state a claim. Dkt. 13. The Enterprise Defendants move to dismiss (1) Borisov’s claims against Alamo because it is not an entity subject to suit, (2) Borisov’s claims against Enterprise and Snorac for lack of personal jurisdiction, and (3) any remaining claims for failure to state a claim. Dkt. 16. The Enterprise Defendants also move to strike material in Borisov’s complaint. *Id.*

1. Alamo

The Enterprise Defendants move to dismiss Alamo because it is only a trade name and lacks the capacity to be sued. Dkt. 16 at 4–5. Borisov failed to respond to this argument, which the Court considers as an admission that the argument has merit. Local Rules W.D. Wash. LCR 7(b)(2). Regarding the merits, the Court agrees with the

1 Enterprise Defendants that a non-entity trade name lacks the capacity to be sued and
2 should be dismissed. Fed. R. Civ. P. 17(b). Therefore, the Court grants the Enterprise
3 Defendants' motion on this issue.

4 **2. Personal Jurisdiction**

5 Claims against a defendant may be dismissed when a court lacks personal
6 jurisdiction. Fed. R. Civ. P. 12(b)(2). When a defendant seeks dismissal on these
7 grounds, the plaintiff must prove jurisdiction is appropriate. *Picot v. Weston*, 780 F.3d
8 1206, 1211 (9th Cir. 2015). To determine whether it has jurisdiction over a defendant, a
9 federal court applies the law of the state in which it sits, as long as that law is consistent
10 with federal due process. *Diamler AG v. Bauman*, 571 U.S. 117, 125 (2014). Washington
11 grants courts the maximum jurisdictional reach permitted by due process. *Easter v. Am.*
12 *W. Fin.*, 381 F.3d 948, 960 (9th Cir. 2004). Thus, the only question remaining for a
13 Washington district court is whether the Court's exercise of jurisdiction comports with
14 the limitations imposed by due process. *Helicopteros Nacionales de Colombia, S.A. v.*
15 *Hall*, 466 U.S. 408, 413 (1984). A court may not exercise jurisdiction over a defendant if
16 that exercise of jurisdiction "offend[s] traditional notions of fair play and substantial
17 justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Fair play and
18 substantial justice mandate that a defendant has minimum contacts with the forum state
19 before it may be hailed into a court in that forum. *Id.* The extent of those contacts can
20 result in either general or specific jurisdiction. *Goodyear Dunlop Tires Operations, S.A.*
21 *v. Brown*, 564 U.S. 915, 919 (2011). If the requirements for either are met, a court has
22 jurisdiction over the parties. *Helicopteros*, 466 U.S. at 413–14.

1 General jurisdiction permits a court to consider claims against a person or a
2 corporation for any conduct, even that which occurred outside the forum state.
3 *Goodyear*, 564 U.S. at 924; *Daimler*, 571 U.S. at 126–27. A corporation’s mere presence
4 within a state is not sufficient to establish general jurisdiction. *BNSF Ry. Co. v. Tyrrell*,
5 137 S. Ct. 1549, 1559 (2017). Rather, the corporation’s contacts with the state must be
6 “so continuous and systematic as to render [it] essentially at home.” *Goodyear*, 564 U.S.
7 at 919. “For an individual, the paradigm forum for the exercise of general jurisdiction is
8 the individual’s domicile; for a corporation, it is an equivalent place, one in which the
9 corporation is fairly regarded as at home.” *Id.* “Th[at] inquiry ‘calls for an appraisal of a
10 corporation’s activities in their entirety.’” *BNSF*, 137 S. Ct. at 1559 (quoting *Daimler*,
11 571 U.S. at 139 n.20).

12 Specific jurisdiction permits a district court to exercise jurisdiction over a
13 nonresident defendant for conduct that “create[s] a substantial connection with the forum
14 State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014). To prove that specific jurisdiction
15 exists in a tort-based action, a plaintiff must demonstrate that: (1) a defendant
16 purposefully directed its activities at the forum state, (2) the lawsuit arises out of or
17 relates to the defendant’s forum-related activities, and (3) the exercise of jurisdiction is
18 reasonable. *Picot*, 780 F.3d at 1211. A defendant purposefully directs its conduct toward
19 a forum state when its actions are intended to have an effect within the state.
20 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2003). This
21 occurs if the defendant: “(1) commit[s] an intentional act, (2) expressly aimed at the
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1 forum state, (3) causing harm that the defendant knows is likely to be suffered in the
2 forum state.” *Morrill v. Scott Financial Co.*, 873 F.3d 1136, 1142 (9th Cir. 2017).

3 In this case, Enterprise and Snorac move to dismiss for lack of personal
4 jurisdiction. Enterprise asserts that it is a Missouri corporation with its principal place of
5 business in Missouri. Dkt. 16 at 8. Snorac asserts that it is a New York corporation with
6 its principal place of business in New York. *Id.* at 9. Both entities argue that Borisov
7 fails to establish general jurisdiction over either because he fails to show continuous and
8 systematic contacts with Washington. In fact, both entities assert that neither of them
9 conducts any business in Washington. Borisov fails to counter these assertions.
10 Therefore, the Court grants the motion as to general jurisdiction.

11 Regarding specific jurisdiction, Enterprise and Snorac assert that neither of them
12 directed any activity at Washington. *Id.* at 8–10. Although the majority of Borisov’s
13 response centers on the physical impossibility of him being in New York past the one day
14 he rented the vehicle, he does briefly mention that Enterprise and Snorac knew he was a
15 Washington resident when he rented the vehicle. *See* Dkt. 23. Borisov, however, fails to
16 establish that conducting business with a Washington resident in New York constitutes an
17 intentional act expressly aimed at the forum state of Washington. Therefore, the Court
18 grants the Enterprise Defendants’ motion to dismiss for lack of personal jurisdiction.

19 **3. Failure to State a Claim Standard**

20 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
21 Procedure may be based on either the lack of a cognizable legal theory or the absence of
22 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*,

1 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the
2 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301
3 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed
4 factual allegations but must provide the grounds for entitlement to relief and not merely a
5 "formulaic recitation" of the elements of a cause of action. *Bell Atlantic Corp. v.*
6 *Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs must allege "enough facts to state a claim
7 to relief that is plausible on its face." *Id.* at 1974.

8 **a. FCBA**

9 The majority of Borisov's claims against Chase are based on Chase's alleged
10 violation of the billing dispute procedures contained in the FCBA, which is part of the
11 Truth In Lending Act, 15 U.S.C. § 1601. The FCBA was enacted to help consumers
12 make informed decisions about the use of credit and to protect consumers against unfair
13 and inaccurate credit billing practices. *GAC Finance Corp. of Spokane v. Burgess*, 16
14 Wn. App. 758, 760 (1977). To state a claim under the FCBA, plaintiff must allege "(1)
15 the existence of a billing error, (2) timely notification of the billing error, and (3) failure
16 of the bank issuing the card to comply with the procedural requirements of Section
17 1666." *Cunningham v. Bank One*, 487 F.Supp.2d 1189, 1191 (W.D. Wash. 2007) (citing
18 *Beaumont v. Citibank (South Dakota) N.A. and Chase Bank*, 2002 WL 483431, *3
19 (S.D.N.Y. March 28, 2002)). "If a credit-card holder sends a written notice disputing a
20 charge within sixty days of receiving a bill, the FCBA requires a credit-card issuer to
21 acknowledge the dispute within thirty days, investigate the matter, and provide a written
22 explanation of its decision within ninety days." *Lyon v. Chase Bank USA, N.A.*, 656 F.3d

1 877, 880 (9th Cir. 2011) (citing 15 U.S.C. § 1666(a)). If the credit card issuer’s
2 investigation causes it to believe that there was no error, the credit card issuer must send
3 a written explanation to the credit card holder setting forth the reasons why “the [credit
4 card issuer] believes” that the charge is valid. 15 U.S.C. § 1666(a)(3)(B)(ii).

5 In this case, Chase argues that Borisov fails to allege any failure to comply with
6 the procedural requirements of § 1666. Borisov fails to address this argument and instead
7 concentrates on Chase’s failure to determine the validity of the credit card charges. Dkt.
8 22 at 3–5. In other words, Borisov asserts that Chase must investigate whether Borisov
9 actually returned the vehicle to its proper location on the day it was due. Nothing in the
10 FCBA requires Chase to engage in such an intensive investigation or even contest
11 Snorac’s documents asserting that the vehicle was not returned on time. Instead, the
12 FCBA requires Chase to investigate the *charge* and then inform Borisov why it
13 “believes” the subject charge is valid. 15 U.S.C. § 1666(a)(3)(B)(ii). Chase complied
14 with these procedures on two separate occasions as evidenced by the documents
15 embedded in Borisov’s complaint. Thus, Borisov fails to state sufficient facts to support
16 a violation of the FCBA, and the Court grants Chase’s motion on these claims.

17 **b. CPA**

18 To state a CPA claim, the plaintiff must allege (1) an unfair or deceptive act or
19 practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to
20 a person’s business or property, and (5) causation. *Hangman Ridge Stables, Inc. v.*
21 *Safeco Title Ins. Co.*, 105 Wn.2d 778, 784 (1986).

1 In this case, Chase moves to dismiss Borisov's CPA claim because it is based on
2 untenable assertions. Dkt. 13 at 9. Borisov alleges that Chase violated the CPA by
3 failing to resolve the billing dispute, failing to conduct a full investigation into the
4 vehicles' whereabouts, and failing to comply with Washington's identity theft statutes.
5 SAC at 22–26. The Court agrees with Chase that none of these allegations constitute an
6 unfair or deceptive act. First, Chase complied with its FCBA obligations and Borisov
7 fails to establish that such compliance was unfair or deceptive. *Panag v. Farmers Ins.*
8 *Co. of Wash.*, 166 Wn.2d 27, 47 (2009) (An act is unfair or deceptive if it “had the
9 capacity to deceive a substantial portion of the public.”). There is nothing deceiving
10 about promptly responding to an alleged dispute, investigating, and then informing the
11 card holder that the charge appears to be valid. Thus, Borisov's claim fails on this
12 allegation.

13 Second, Borisov fails to establish that Chase had any duty to resolve factual
14 disputes between its card holders and merchants. In other words, it is not unfair and
15 deceptive to accept Snorac's documentation stating that Borisov did not properly return
16 the vehicle on time. Thus, Borisov's claim fails on this allegation.

17 Finally, Borisov alleges that Chase violated Washington's identity theft statutes.
18 RCW 9.35.040(1) provides victims of identification theft with a private cause of action
19 when: (1) a victim submits a written request to a person or entity possessing information
20 relating to the actual or potential identity theft, and (2) that person or entity fails to
21 provide the victim with all relevant application and transaction information related to the
22 transaction being alleged as a potential or actual identity theft. Liability cannot arise,

1 | however, if the victim’s written request does not include: (1) a government-issued photo
2 | identification card, or a copy thereof, (2) a copy of a filed police report evidencing the
3 | victim’s claim, and (3) a written statement from the state patrol showing that the state
4 | patrol has on file documentation of the victim’s identity. RCW 9.35.040(2)(a)–(c); *see*
5 | *also State v. Evans*, 177 Wn.2d 186, 213–14 (2013) (“in order for victims to obtain this
6 | information [under RCW 9.35.040(1)], the statute requires victims to provide ‘proof of
7 | positive identification,’ including ‘[t]he showing of a government-issued photo
8 | identification card . . .’ [and] a ‘written statement from the state patrol showing that the
9 | state patrol has on file documentation of the victim’s identity pursuant to the personal
10 | identification procedures in RCW 43.43.760.’”).

11 | In this case, Borisov fails to allege sufficient facts to state a claim against Chase
12 | for violation of the identity theft statutes or even respond to Chase’s arguments regarding
13 | this failure. Thus, the Court grants Chase’s motion on this allegation as well and
14 | dismisses Borisov’s CPA claim.

15 | **c. Relief**

16 | “A district court should not dismiss a pro se complaint unless it is absolutely clear
17 | that the deficiencies of the complaint could not be cured by amendment.” *Akhtar v.*
18 | *Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks
19 | omitted). However, “the district court’s discretion in denying amendment is ‘particularly
20 | broad’ when it has previously given leave to amend.” *Miller v. Yokohama Tire Corp.*,
21 | 358 F.3d 616, 622 (9th Cir. 2004) (quoting *Chodos v. W. Publ’g Co.*, 292 F.3d 992, 1003
22 | (9th Cir. 2002) (internal quotation marks omitted)).

1 In this case, the Court concludes that Borisov should not be granted leave to
2 amend to file a third amended complaint. Borisov's true dispute is with the parties that
3 this Court lacks personal jurisdiction over. Thus, any amendment as to those parties
4 would be futile. Regarding Chase, Borisov's own complaint includes letters to show that
5 Chase complied with its obligations as a credit card issuer. Thus, filing an amended
6 complaint against Chase would not only be futile but could also be considered borderline
7 harassment. Therefore, the Court denies Borisov leave to amend.

8 IV. ORDER

9 Therefore, it is hereby **ORDERED** that Chase's motion to dismiss, Dkt. 13, and
10 the Enterprise Defendants' motion to dismiss, Dkt. 16, are **GRANTED** and Borisov's
11 motion for summary judgment, Dkt. 14, is **DENIED as moot**.

12 The Clerk shall enter a **JUDGMENT** and close the case.

13 Dated this 24th day of January, 2019.

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16 BENJAMIN H. SETTLE
17 United States District Judge
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